

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
JAN 31 2002
BRANDI K. ARGENTI, CLERK
United States Bankruptcy Court
Columbia, South Carolina (6)

IN RE:

Claudia Brown,

Debtor.

C/A No. 02-00089-W

ORDER

Chapter 7

THIS MATTER comes before the Court for hearing on a Rule to Show Cause requiring Claudia Brown ("Debtor") and Jason T. Moss, Debtor's attorney, to show cause why sanctions should not be entered.¹

The context for the Rule to Show Cause is that Debtor violated a court order prohibiting her from filing a Chapter 13 case. On September 5, 2001, this Court entered an order (the "September Order") that prohibited Debtor from filing a Chapter 13 case for 180 days. On January 4, 2002 and within the period when the September Order prohibits her from filing a Chapter 13 case, Debtor filed a Chapter 13 petition.

Debtor's counsel explained that the filing of the Chapter 13 case within the prohibited period resulted from an oversight by his staff and that he did not intentionally violate the September Order. He said his staff determined Debtor had filed a prior bankruptcy case, but his staff assumed the case had not been dismissed with prejudice. Debtor's counsel admitted that, when he filed Debtor's second Chapter 13 case, neither he nor his staff read the September Order. Similarly, Debtor testified that she did not understand that she was prohibited from filing a Chapter 13 case because she had not communicated with her attorney in the previous case after

¹ The Rule to Show Cause simultaneously dismissed Debtor's Bankruptcy Case, C/A No. 02-00089, on January 18, 2002.

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it was dismissed. Later, after learning of the September Order, Debtor's counsel immediately filed a motion to convert the case to Chapter 7, and the case was converted on January 14, 2002.

When an attorney undertakes representation of a client and prepares to file a bankruptcy petition on behalf of that client, this Court believes that the attorney has an affirmative duty to determine whether that client is eligible for bankruptcy protection. Part of this duty includes checking court records and discovering whether the client has previously filed bankruptcy. This step in the counseling process is crucial because the Court in this District regularly dismisses cases with prejudice and bars refiling for a certain period. In instances where there is a previous case, the attorney must specifically review the Court's orders from that previous case and abide by those orders. The integrity of a court order cannot be overstated, and it is incumbent upon attorneys and parties to abide by an order's mandates.

This burden is not one for attorneys alone to shoulder. Debtors who seek the protection of the Bankruptcy Code have a duty to disclose to their lawyers and the Court any prior bankruptcy cases and the terms of their dismissal, discharge, or other resolution. The Court is dubious of Debtor's statement that she did not understand the clear wording of the September Order, which had been entered and served upon her and her prior attorney.

In this case, Debtor and Debtor's attorney indicate that they now recognize the prohibition of the September Order and desire and have the need to file a Chapter 7 case immediately, a filing that would not violate the September Order. Accordingly, the Court will not sanction Debtor or Debtor's attorney and instead admonishes them through this Order.² The

² This Order is conditioned upon the Court's understanding that Debtor will refile a Chapter 7 case and not convert it to Chapter 13 at any time, nor does Debtor plan to refile a Chapter 13 case after the prohibition period.

Court feels strongly about the obligations debtors and their attorneys must fulfill as has been indicated in prior cases, including In re Diaz, C/A No. 01-11798 (Bankr. D. S.C. Dec. 12, 2001).³ This Order serves as public notice to the bankruptcy bar that the Court considers the fulfillment of these duties an important matter, and, upon learning that these duties are neglected, the Court will respond in a manner that reflects its concern and consider imposing sanctions, which may include disgorgement of fees, other monetary fines, ex parte dismissal of the case and annulment of the automatic stay, and extensions of the bar to refiling. The Court will not easily accept the lack of knowledge of the prior order as an excuse in future cases.

IT IS THEREFORE ORDERED that Debtor's case, C/A No. 02-00089-W, remains dismissed.

IT IS FURTHER ORDERED that the bar to refiling as described in the September Order will continue.

A copy of this Order shall also be provided to the United States Trustee and all standing Chapter 13 Trustees in this District for their information.

AND IT IS SO ORDERED.

Columbia, South Carolina,
January 31, 2002.


UNITED STATES BANKRUPTCY JUDGE

³ My colleague on the South Carolina bench has reviewed and agrees with the terms of this Order.

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

JAN 31 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH

Deputy Clerk

*Sent to BNC
All creditors*

*USTR
WKS
JG
HB* } *by mail*